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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

AZ CORP COMMISSION
DOCUMENT CONTROL

UTILITIES DIVISION STAFF

Complainant,

v.

LIVEWIRENET OF ARIZONA, LLC; THE
PHONE COMPANY MANAGEMENT GROUP,
LLC; THE PHONE COMPANY OF ARIZONA
JOINT VENTURE D/B/A THE PHONE
COMPANY OF ARIZONA; ON SYSTEMS
TECHNOLOGY, LLC and its principals, TIM
WETHERALD, FRANK TRICAMO AND DAVID
STAFFORD; and THE PHONE COMPANY OF
ARIZONA, LLP and its Members,

Respondents.

IN THE MATTER OF THE PHONE COMPANY
OF ARIZONA JOINT VENTURE d/b/a THE
PHONE COMPANY OF ARIZONA'S APPLICA-
TION FOR CERTIFICATE OF CONVENIENCE
AND NECESSITY TO PROVIDE INTRASTATE
TELECOMMUNICATIONS SERVICE AS A
LOCAL AND LONG DISTANCE RESELLER AND
ALTERNATIVE OPERATOR SERVICE.

IN THE MATTER OF THE APPLICATION OF
THE PHONE COMPANY MANAGEMENT
GROUP, LLC f/k/a/ LIVEWIRENET OF
ARIZONA, LLC TO DISCONTINUE LOCAL
EXCHANGE SERVICE.

IN THE MATTER OF THE APPLICATION OF
THE PHONE COMPANY MANAGEMENT
GROUP, LLC FOR CANCELLATION OF
FACILITIES-BASED AND RESOLD LOCAL
EXCHANGE SERVICES.

IN THE MATTER OF THE APPLICATION OF
THE PHONE COMPANY MANAGEMENT
GROUP, LLC d/b/a THE PHONE COMPANY FOR
THE CANCELLATION OF ITS CERTIFICATE OF
CONVENIENCE OF CONVENIENCE AND
NECESSITY.

DOCKET NO. T-03889A-02-0796

DOCKET NO. T-04125A-02-0796

Arizona Corporation Commission
DOCKETED

FEB 27 2004

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DOCKET NO. T-04125A-02-0577

DOCKET NO. T-03889A-02-0578

DOCKET NO. T-03889A-03-0152

DOCKET NO. T-03889A-03-0202

NOTICE OF FILING
STIPULATION OF DISMISSAL

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1 Ernest Johnson
2 Director, Utilities Division
3 ARIZONA CORPORATION COMMISSION
4 1200 West Washington Street
5 Phoenix, AZ 85007

6 Maureen Scott, Staff Attorney
7 ARIZONA CORPORATION COMMISSION
8 1200 West Washington Street
9 Phoenix, AZ 85007

10 A COPY of the foregoing was
11 Mailed this 24th day of February
12 2004, to:

13 Tim Wetherald
14 3025 South Parker Road, Suite 100
15 Aurora, CO 80014

16 David Stafford Johnson
17 Greystone Mansion
18 1801 Williams Street, Suite 100
19 Denver, CO 80218

20 Roald Haugan
21 32321 County Highway 25
22 Redwood Falls, MN 56283

23 Travis and Sara Credle
24 3709 West Hedrick Drive
25 Morehead City, NC 28557

26 Frank Tricamo
6888 South Yukon Court
Littleton, CO 80128

Steven Petersen
2989 Brookdale Drive
Brooklyn Park, MN 55444

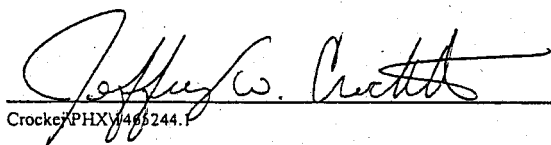
1 Timothy Berg
2 Theresa Dwyer
3 Fennemore Craig
4 3003 N. Central, Ste 2600
5 Phoenix, Arizona 85003-2913

6 Qwest Corporation
7 Attention: Law Department
8 4041 North Central, 11th Floor
9 Phoenix, Arizona 85012

10 Leon Swickow
11 2901 Clint Moore Road, #155
12 Boca Raton, FL 33496

13 Marc David Shiner
14 4043 NW 58th Street
15 Boca Raton, FL 33496

16 Marc David Shiner
17 5030 Champion Blvd, Ste 6-198
18 Boca Raton, FL 33496

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1 BEFORE THE ARIZONA CORPORATION COMMISSION

2 COMMISSIONERS

3 MARC SPITZER, Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 UTILITIES DIVISION STAFF

9 Complainant,

10 v.

11 LIVEWIRENET OF ARIZONA, LLC; THE
12 PHONE COMPANY MANAGEMENT GROUP,
13 LLC; THE PHONE COMPANY OF ARIZONA
14 JOINT VENTURE D/B/A THE PHONE
15 COMPANY OF ARIZONA; ON SYSTEMS
16 TECHNOLOGY, LLC and its principals, TIM
17 WETHERALD, FRANK TRICAMO AND DAVID
18 STAFFORD JOHNSON; and THE PHONE
19 COMPANY OF ARIZONA, LLP and its Members,

20 Respondents.

21 IN THE MATTER OF THE PHONE COMPANY
22 OF ARIZONA JOINT VENTURE d/b/a THE
23 PHONE COMPANY OF ARIZONA'S APPLICA-
24 TION FOR CERTIFICATE OF CONVENIENCE
25 AND NECESSITY TO PROVIDE INTRASTATE
26 TELECOMMUNICATIONS SERVICE AS A
LOCAL AND LONG DISTANCE RESELLER AND
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DOCKET NO. T-03889A-02-0796

DOCKET NO. T-04125A-02-0796

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DOCKET NO. T-03889A-02-0578

DOCKET NO. T-03889A-03-0152

DOCKET NO. T-03889A-03-0202

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1 Group, LLC (also referred to herein as "PCMG"). On January 30, 2002, PCMG filed an
2 initial tariff and price list for PCMG, doing business as The Phone Company.

3 C. On July 31, 2002, PCMG filed an Application to Discontinue Local Exchange
4 Service in Arizona. PCMG's Application was docketed as No. T-03889A-02-0578. By letter
5 dated October 9, 2002, and docketed with the Commission, PCMG withdrew its pending
6 Application. Both Applications are still pending before the Commission.

7 D. On July 31, 2002, the Phone Company of Arizona Joint Venture (the "Joint
8 Venture") filed an Application for a Certificate of Convenience and Necessity to provide
9 intrastate telecommunications service as a local and long distance reseller and alternative
10 operator service provider. The Joint Venture's Application was docketed as No. T-04125A-02-
11 0577. A letter seeking to voluntarily withdraw the Joint Venture's Application was docketed
12 October 7, 2002, by counsel for OST, the general partner of the Joint Venture. This
13 Application is still pending before the Commission. OST was also retained by the Partnership
14 to perform management services for the Partnership. The Joint Venture has since been
15 dissolved.

16 E. By letter dated December 20, 2002, Qwest notified PCMG that its service was
17 subject to disconnection. At the time, the Phone Company of Arizona was providing service to
18 approximately 6,000 customers.

19 F. On October 18, 2002, Staff filed a Complaint (the "Complaint") against
20 LiveWireNet, PCMG, the Joint Venture d/b/a the Phone Company of Arizona, OST and its
21 principles Tim Wetherald ("Wetherald"), Frank Tricamo and David Stafford Johnson, and the
22 Partnership (collectively, the "Respondents"). The Complaint was docketed as Nos. T-
23 03889A-02-0796 and T-04125A-02-0796. The Complaint raised concerns regarding the Phone
24 Company of Arizona's status to provide telecommunications service in Arizona and whether it
25 was a fit and proper entity to conduct service in the state.

26

1 G. On March 10, 2003, Staff mailed a notice to the Phone Company of Arizona's
2 customers, at the direction of the Administrative Law Judge ("ALJ"), advising those customers
3 that Qwest had provided notice to the Phone Company of Arizona that its service was subject to
4 disconnection by Qwest. The notice also contained a list of alternative providers for the
5 customers to contact for service and a statement that Qwest would be the default provider in the
6 event that the customer did not choose another provider. The Phone Company of Arizona's
7 service was disconnected by Qwest some time after March 21, 2003.

8 H. On March 11, 2003, PCMG filed an Application to Discontinue Providing
9 Competitive Facilities Based and Resold Exchange Service. PCMG's Application was docketed
10 as No. T-03889A-03-0152, and is still pending before the Commission.

11 I. On April 2, 2003, PCMG filed an advice letter seeking to voluntarily surrender
12 its CC&N. PCMG's application was docketed as No. T-03889A-03-0202, and is still pending
13 before the Commission.

14 J. On June 2, 2003, Staff filed an Amended Complaint (the "Amended
15 Complaint"). The Amended Complaint alleged that the Respondents, or some of them: (i)
16 violated A.R.S. § 40-282 by providing telephone service in Arizona without a CC&N; (ii)
17 violated A.R.S. § 40-361(B) in that Respondents, or some of them, are not fit and proper
18 entities to provide telephone service in Arizona; (iii) violated A.R.S. § 40-361(B) in that
19 Respondents, or some of them, are not financially capable of providing telephone service in
20 Arizona; (iv) violated A.R.S. § 40-361(B) in that Respondents, or some of them, do not have
21 the technical capability to provide telephone service in Arizona; and (v) acted in willful
22 violation of Commission orders. In its prayer for relief, Staff requested that the Commission
23 make certain findings as set forth in the Amended Complaint, revoke the CC&N of PCMG,
24 impose monetary penalties on Respondents, or some of them, and deny OST and its members
25 the right to obtain a CC&N in Arizona.
26

1 K. Respondents Partnership, Frank Tricamo and David Stafford Johnson have
2 denied the allegations contained in Staff's Complaint and Amended Complaint as they pertain to
3 each of them.

4 L. By Procedural Order dated May 15, 2003, the Commission's Hearing Division
5 consolidated Docket Nos. T-04125A-02-0577, T-03889A-02-0578, T-03389A-03-0152 and T-
6 03889A-03-0202 with Docket Nos. T-03889A-02-0796 and T-04125A-02-0796. The
7 Commission's Hearing Division held the first day of hearings in these consolidated dockets on
8 November 3, 2003. The hearing was postponed due to a family emergency of the ALJ and was
9 continued to February 2, 2004. A proposed settlement was docketed by counsel for the
10 Partnership on January 29, 2004. In order to allow the parties adequate time for consideration
11 of the proposed settlement, the hearing was subsequently rescheduled to commence on February
12 24, 2004.

13 M. The Partnership, Frank Tricamo, David Stafford Johnson, and Staff agree that a
14 stipulation between the Parties is in the public interest. Thus, the Parties have entered into this
15 Stipulation, subject to its approval by the ALJ and/or the Commission, if necessary, which
16 resolves all of the outstanding issues in the Complaint and the Amended Complaint as to the
17 Partnership, Frank Tricamo and David Stafford Johnson.

18 TERMS AND CONDITIONS

19 1. No Finding of Wrongdoing by the Parties.

20 (a) Partnership. The Parties agree that the Partnership and its individual
21 partners (with the exception of Leon Swichkow and Marc David Shiner) are not responsible for
22 any wrongdoing alleged in the Complaint or the Amended Complaint in Docket Nos. T-03889A-
23 02-0796 and T-04125A-02-0796. Staff acknowledges that the Partnership and its individual
24 partners (with the exception of Leon Swichkow and Marc David Shiner) have at all times
25 cooperated fully with Staff in its investigation of the Complaint and the Amended Complaint.
26 There are no restrictions on the rights of the Partnership and its individual partners (with the

1 exception of Leon Swichkow and Marc David Shiner) to apply for certificates of convenience and
2 necessity to provide public utility service in the State of Arizona, or to do business in the State of
3 Arizona.

4 (b) Tricamo and Johnson. This Stipulation shall not constitute a finding of
5 responsibility by Frank Tricamo and David Stafford Johnson for the wrongdoing alleged in the
6 Complaint or the Amended Complaint, in Docket Nos. T-03889A-02-0796 and T-04125A-02-
7 0796.

8 2. Dismissal with Prejudice. The Complaint and Amended Complaint filed by Staff
9 in Docket Nos. T-03889A-02-0796 and T-04125A-02-0796 shall be dismissed with prejudice as
10 to the Partnership, its individual partners (with the exception of Marc David Shiner and Leon
11 Swichkow), David Stafford Johnson and Frank Tricamo, subject to the following conditions:

12 (a) The Partnership. The Partnership pre-filed, in these consolidated
13 proceedings, the direct testimony of Travis Credle, a partner in the Partnership. Mr. Credle
14 agrees to appear at the hearing in these consolidated dockets to sponsor his pre-filed direct
15 testimony, and shall answer questions from Staff and/or the ALJ pertaining to the pre-filed
16 testimony or other matters related to these consolidated dockets.

17 (b) Mr. Frank Tricamo. Mr. Frank Tricamo did not pre-file direct testimony in
18 these consolidated dockets. However, Mr. Frank Tricamo agrees to appear at the hearing in these
19 consolidated dockets to answer questions from Staff and/or the ALJ pertaining to matters related
20 to these consolidated dockets. Mr. Tricamo has recently been cooperative with the Staff and has
21 provided information and facts in his possession which Staff believes will lead to the resolution of
22 issues raised in the Staff's Complaint and Amended Complaint. Mr. Tricamo agrees to provide
23 such facts and information to the ALJ and Staff during the hearing.

24 (c) Mr. David Stafford Johnson. Mr. David Stafford Johnson did not pre-file
25 direct testimony in these consolidated dockets. However, Mr. David Stafford Johnson agrees to
26 appear at the hearing in these consolidated dockets to answer questions from Staff and/or the ALJ

1 pertaining to matters related to these consolidated dockets. Mr. Stafford Johnson has recently
2 been cooperative with the Staff and has provided information and facts in his possession which
3 Staff believes will lead to the resolution of issues raised in the Staff's Complaint and Amended
4 Complaint. Mr. David Stafford Johnson agrees to provide such facts and information to the ALJ
5 and Staff during the hearing.

6 (d) Good Faith Efforts Required.

7 Mr. Frank Tricamo, Mr. David Stafford Johnson and the Partnership all agree that they are
8 required by the terms of this Stipulation to make a good faith effort to provide to the Staff or the
9 ALJ at the hearing, any information and/or facts in their possession in order to resolve the issues
10 raised by the Staff's Complaint and Amended Complaint. If the parties fail to act in a manner
11 consistent with this Stipulation, Staff will seek appropriate relief including reinstatement of the
12 Complaint and Amended Complaint against the Parties.

13 (e) Additional Assurance.

14
15 For a period of five (5) years from the effective date of an order approving this
16 Stipulation, as a further additional assurance, David Stafford Johnson and Frank Tricamo
17 voluntarily agree not to acquire any ownership interest in any public utility providing service in
18 Arizona (excluding Mr. Johnson's or Mr. Tricamo's ownership of stock where such ownership
19 comprises less than 5% of the outstanding stock of such public utility). Mr. Johnson and Mr.
20 Tricamo further agree that they will not assume any management responsibilities in any public
21 utility providing service in Arizona for that same period. Mr. Tricamo and Mr. Johnson further
22 agree that they will not assume an employment relationship, provide legal services, or participate
23 in the formation of a public utility or the formation of any business venture with the purpose of
24 providing public utility service in Arizona for a period of five (5) years. If and when, after the
25 five (5) year period, either Mr. Tricamo or Mr. Johnson undertake any of the activities proscribed
26 above, they shall immediately notify the Commission. Such disclosure shall be in writing and

1 addressed to the Director of Utilities, Arizona Corporation Commission, 1200 West Washington
2 Street, Phoenix, Arizona, 85007, and shall reference Docket No. T-03889A-02-0796. A copy of
3 said letter shall also be sent to the Commission's Compliance Division.

4 3. Procedure for Entry into Force of this Stipulation. This Stipulation shall not
5 become effective until the ALJ, and/or Commission, if necessary, has issued an order approving
6 substantially all of the terms of this Stipulation.

7 4. Authority of Staff; Approval by the ALJ and/or Commission.

8 (a) The Parties acknowledge and agree that: (i) Staff does not have the power
9 to bind the ALJ and/or the Commission; and (ii) for purposes of this Stipulation, Staff acts in the
10 same manner as a party in proceedings before the ALJ and/or Commission.

11 (b) The Parties further acknowledge and agree that: (i) this Stipulation acts as
12 a procedural device to propose its terms to the ALJ, and/or Commission if necessary; and (ii)
13 this Stipulation has no binding force or effect until approved by an order of the ALJ, and if
14 necessary, the Commission.

15 (c) The Parties further acknowledge and agree that the ALJ will evaluate the
16 terms of this Stipulation, and that after such evaluation the ALJ may enter an order approving
17 the Stipulation requiring insubstantial modifications to the terms hereof and/or before making
18 his recommendation regarding this Stipulation to the Commission, if necessary.

19 (d) The Parties agree that in the event that the ALJ and/or Commission, if
20 necessary, issues an order approving substantially all of the terms of this Stipulation, such
21 action by the ALJ and/or Commission, if necessary, constitutes approval of the Stipulation, and
22 thereafter the Parties shall abide by its terms.

23 (e) Unless the Parties to this Stipulation otherwise agree, in the event that the
24 ALJ and/or Commission, if necessary, does not issue an order approving substantially all of the
25 terms of this Stipulation, it shall be deemed withdrawn by the Parties. If any Party withdraws
26

1 from the Stipulation, then any other party may promptly request that the ALJ schedule a hearing
2 on the allegations against the Party as set forth in the Complaint and Amended Complaint.

3 5. Severability. Each of the terms of the Stipulation are in consideration and support
4 of all other terms. Accordingly, such terms are not severable.

5 6. Support and Defend. The Parties agree to support and defend this Stipulation
6 before the ALJ and the Commission, if necessary. If this Stipulation enters into force, the Parties
7 shall support and defend this Stipulation before any court or regulatory agency in which it may be
8 at issue.

9 DATED this 24th day of February, 2004.

10 THE PHONE COMPANY OF ARIZONA, LLP

11 By: Jeffrey W. Crockett
12 Its: Attorney
13
14

15 FRANK TRICAMO

16 [Signature]
17

18 DAVID STAFFORD JOHNSON

19 [Signature]
20
21

22 UTILITIES DIVISION STAFF OF THE ARIZONA
23 CORPORATION COMMISSION

24 By: E. G. Johnson
25 Title: Utilities Director
26